United Nations **AT**

Administrative Tribunal

Distr.
LIMITED

AT/DEC/925
29 July 1999

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 925

Cases No. 934: KAMOUN
No. 1009: KAMOUN
No. 1073: KAMOUN

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, First Vice-President, presiding; Mr. Julio Barboza, Second Vice-President; Mr. Victor Yenyi Olungu;

Whereas, at the request of M'Hamed Ali Kamoun, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended until 31 December 1995, the time-limit for the filing of an application with the Tribunal in case No. 934 (hereinafter the "first case");

Whereas, on 4 December 1995, the Applicant filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas at the request of the Applicant, the President of the Tribunal, with the agreement of the Respondent, extended to 31 March 1996, the time-limit for the filing of an application with the Tribunal;

Whereas, on 29 March 1996, the Applicant again filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 23 July 1996, the Applicant, after making the necessary corrections, filed an application in the "first case" containing pleas which read, in part, as follows:

"II. Pleas

The Applicant urges the Tribunal, in the light of these facts, to:

1. Rescind the decision to suspend him and constrain him to take forced leave ...

2. Reinstate [him] to the post and functions he formerly occupied with very high performance ratings since being promoted to P-4 [...] in April 1982 in the Information Service, Geneva ...

3. Award damages ... in reparation for the 'persisting damaging circumstances' found by JAB [...] and acknowledged on the Secretary-General's behalf by the Administration in its letter of 29 June 1995; damages (*pretium doloris*) should also be paid for the mental suffering long endured by the Applicant owing to the attacks on his honour, reputation and future career in an area as 'sensitive' as information and public relations, where his partners and interlocutors are press correspondents and both governmental and non-governmental representatives.

4. Grant a hearing to Applicant's counsel and the chairmen/rapporteurs of the Joint Appeals Board and discrimination panels that have had to rule on his complaints ...

...

As preliminary and/or interlocutory measures, the Applicant requests the Tribunal, before going into the merits, to order an investigation within the Office of Human Resources Management (OHRM) and, especially, the Appointments and Promotions Board (APB/APC) to ascertain what factors and obstacles caused Applicant's formal applications for P-5 [...] posts officially declared vacant and advertised to be never duly examined ...

Request for compensation

In recognition whereof, the Applicant requests reimbursement of his costs ($US 10,000) and compensation under three heads:

1. The equivalent of one year's salary in damages for the renewed and persistent psychologically and professionally damaging circumstances ...

2. The equivalent of one year's salary in damages for the injury caused by blocking Applicant's career ...

3. The equivalent of two years' salary as *pretium doloris* and damages for the attacks the Applicant has long endured on his dignity, honour, reputation and future career ..."

Whereas the Respondent filed his answer on 20 August 1997;

Whereas the Applicant filed written observations on 13 October 1997;

Whereas at the request of the Applicant, the President of the Tribunal, with the agreement of the Respondent, successively extended to 31 July and 31 October 1997, the time-limit for the filing of an application in case No. 1009 (hereinafter the "second case") with the Tribunal;

Whereas, on 28 October 1997, the Applicant filed an application in the "second case" that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 5 March 1998 the Applicant, after making the necessary corrections, filed an application in the "second case" containing pleas which read as follows:

"May it please the Administrative Tribunal:

Initially

1. To suspend, as a provisional measure, the Secretary-General's decision of 18 March 1997 assigning Mr. KAMOUN to Dakar;

2. To hear the Applicant and the chairmen/rapporteurs of the Joint Appeals Board panels and the Panel on Discrimination and Other Grievances;

3. To proceed with investigations within the United Nations Office of Human Resources Management and Appointments and Promotions Board to ascertain what factors and obstacles caused the Applicant's formal applications for P-5 posts never to be successful;

Principally

4. To rescind the Secretary-General's decision of 18 March 1997 assigning Mr. KAMOUN to a post in Dakar;

5. To reinstate the Applicant on a P-5 or equivalent post compatible with his medical and family circumstances, and accessorily to reinstate him in the post and functions he occupied before his suspension on 2 January 1996;

6. To order the payment to the Applicant of compensation for the injury sustained in the damage to his career since 1993;

7. To order the payment to the Applicant of compensation in recognition of the psychological wrong suffered since 1993;

8. To require Respondent to reimburse all costs and expenses relating to the present proceedings;

Accessorily

9. To instruct the Applicant to prove by all legal means, including the examination of witnesses, the facts alleged in this submission."

Whereas the Respondent filed his answer on 28 April 1998;

Whereas, on 24 June 1998, the Applicant requested the Tribunal to postpone its consideration of the first and the second case;

Whereas at the request of the Applicant, the President of the Tribunal, with the agreement of the Respondent, extended to 30 April 1999 the time-limits for the filing of an application with the Tribunal in case No. 1073 (hereinafter the "third case").

Whereas, on 5 March 1999, the Applicant requested that the third case be joined with the first and the second case, which were still pending;

Whereas, on 25 March 1999, the Applicant filed an application in the "third case" containing pleas which read, in part, as follows:

"May it please the Administrative Tribunal

...

Principally

As regards the form

4. To declare receivable this appeal against the Secretary-General's failure to take a decision following the report [of the Joint Appeals Board (JAB)] of 8 December 1998 communicated to the Applicant on 11 January 1999;

As regards the merits

5. To rescind the administrative decision dated 2 January 1996 by the Chief, Personnel Service, to place the Applicant on special leave with full pay;

6. To rescind the Secretary-General's decision of 18 March 1997 assigning Mr. KAMOUN to a post in Dakar;

That done

7. To reinstate the Applicant on a P-5 or equivalent post compatible with his medical and family circumstances, and accessorily to reinstate him in the post he occupied before his suspension on 2 January 1996;

8. To order payment to the Applicant of compensation amounting to $US 200,000, or the equivalent in Swiss francs on the date of the decision, for the injury and moral damage sustained;

9. To award the Applicant fair compensation as a contribution towards his lawyers' fees;

Accessorily

10. To instruct the Applicant to prove by all legal means the facts he sets forth in this submission."

Whereas the Respondent filed his answer on 1 June 1999;

Whereas, on 1 July 1999, the Applicant submitted additional documents;

Whereas the Applicant filed written observations on 2 July 1999;

Whereas, on 5 July 1999, the presiding member of the panel ruled that no oral proceedings would be held in the cases;

Whereas the facts in the above-mentioned cases are as follows:

The Applicant entered the service of the United Nations on 7 October 1969, on a three-month temporary appointment as Information Assistant, at an *ad hoc* salary level, in the Office of Public Information, External Relations Division, in Tunis, Tunisia. That temporary appointment was extended through 7 April 1970, when the Applicant was granted a one-year fixed term appointment. On 7 April 1971, the Applicant was granted a probationary appointment, which, on 1 October 1971, was converted to a regular appointment. On 1 April 1974, the Applicant was granted a permanent appointment, at an *ad hoc* salary level. On 1 March 1976, he was transferred to Geneva and granted the post of Editorial Assistant, at the G-7 level, in the Office of Public Information, Centre for Economic and Social Information Development Forum. On 1 April 1976, the Applicant was promoted to Associate Information Officer, at the P-2 level. On 1 April 1980, he was promoted to Information Officer, at the P-3 level, and on 1 April 1982, he was promoted to the P-4 level. On 2 January 1996, the Applicant was placed on special leave with full pay (SLWFP).

In a memorandum dated 12 June 1981, the Administration acknowledged the 1 October 1980 finding of the Panel to Investigate Allegations of Discriminatory Treatment that the Applicant was a victim of discriminatory treatment, noted that his recent promotion and transfer addressed two of the Applicant's complaints and assured the Applicant that the Assistant Secretary-General for Personnel Service had "given the necessary instructions to the administrative services concerned in order that [he] should now enjoy the normal prospects of further advancement without hindrance."

By memoranda dated 27 January, 23 March, 27 July, 17 August, and 28 August 1992, the Applicant requested the Administration to provide him with a description of the functions of his post. On 28 July 1992, the Chief, Press Service, assigned the Applicant to the French staff covering the Committee for the Elimination of Racial Discrimination (CERD) conference (3-14 August 1992). On 7 August 1992, the Applicant wrote to the Secretary-General requesting a review of the 28 July 1992 decision to assign him to duties that did not conform to the description of his post, and complaining of discriminatory treatment.

On 1 September 1992, the Applicant lodged an appeal with the Joint Appeals Board (JAB) in New York. This appeal was transferred to the JAB in Geneva, which acknowledged receipt of the appeal on 27 October 1992. The JAB adopted its report on 2 June 1995. Its conclusion and recommendation read as follows:

> "Conclusion and recommendation
>
> 55. The Panel concludes that the Applicant sustained moral damage owing to the allocation of staff engaged by the Information Service to cover the CERD conference between 3 and 14 August 1992.
>
> 56. In the light of the foregoing, the Panel recommends to the Administration that a memorandum should be placed in the appellant's administrative file, referring to this report's finding of 'persisting damaging circumstances' suffered by the appellant and stating that the Administration will be required to see to it that the prejudicial situation faced by the appellant does not recur.
>
> 57. The Panel makes no other recommendation pursuant to this appeal."

On 29 June 1995, the Under-Secretary-General for Administration and Management transmitted a copy of the JAB report to the Applicant and informed him, inter alia, as follows:

> "The Secretary-General ... has taken note of the Board's conclusion that you have suffered moral prejudice owing to the allocation of work assignment by the Information Service at the CERD conference held from 3-14 August 1992. The Board has recommended that a memorandum be placed in your official status file

referring to this report's findings that you have suffered persistent damaging circumstances and stating that the administration is required to see to it that this situation does not recur. The Board has made no further recommendations in favour of your other demands.

The Secretary-General accepts the above-mentioned recommendation and, as moral redress, has decided that the memorandum annexed to the report will become part of your official status file. ...

..."

On 26 July 1995, the Administration added the memorandum annexed to the JAB report to the Applicant's official status file.

On 23 November 1995, the Chief, Personnel Service, informed the Applicant that the Administration had decided to offer the Applicant a choice between assignments to either the UN Mission for the Referendum in Western Sahara (MINURSO) or the UN Angola Verification Mission (UNAVEM) for an initial period of three months. On 29 November 1995, the Applicant informed the Chief, Personnel Service, that he could not possibly accept either offer due to personal health reasons and to his son's chronic medical condition. On 7 December 1995, the Chief, Personnel Service, informed the Assistant Secretary-General, OHRM, along the same lines, but added that the Applicant would be happy to accept a P-5 post that was soon to become available in his home country of Tunisia.

By letter dated 2 January 1996, the Chief, Personnel Service, informed the Applicant as follows:

"Further to our discussions on the subject of an assignment for you outside of Information Service, UNOG, I regret to inform you that attempts to find you an alternate assignment in UN Office at Geneva has been unsuccessful. Our efforts to place you outside of Geneva has also not yet proved possible.

Under the above circumstances and in accordance with the instructions of the Secretary-General you will cease to perform your present functions with UNIS, UNOG, effective immediately and be placed on special leave with full pay until an

assignment has been identified for you. During the period of special leave with full pay you will not be required to report to duty.

Please note that under staff regulation 1.2 you are subject to the authority of the Secretary-General and to any assignment by him to any of the activities or offices of the United Nations. Consequently, it will be in your interest to accept an assignment which will be identified for you in the near future."

On 4 January 1996, the Applicant requested the Secretary-General to review the administrative decision to place the Applicant on SLWFP.

On 11 January 1996, the Applicant requested that the JAB in Geneva recommend that the implementation of the administrative decision be deferred on the basis of staff rule 111.2(c). The JAB adopted its report on 18 January 1996. Its considerations and recommendations read as follows:

"Considerations and recommendations

4. Considering the request for suspension of action, the Panel consulted staff rule 111.2 (c) and article 14 of the Rules of Procedure of the Geneva Joint Appeals Board on the 'suspension of action' procedure.

5. Article 14 of the Rules of Procedure lays down two conditions that must both be met, namely 'the administrative decision in question has not already been implemented' and 'the implementation of this administrative decision would result in irreparable injury to the appellant'. The Panel considered these two questions in turn.

6. As regards the implementation of the administrative decision, it appeared to the Panel that there was no applicable precedent. Pursuant to article 2 of the Rules of Procedure, the Panel proceeded to interpret article 14.1 (a). The Panel believes that the notion of implementation of an administrative decision should not be confined to notification of the decision and the date on which it will take effect, but rather that the decision has produced all its administrative effects. It considered the material at its disposal and arrived at the following observations:

(a) The administrative action form (P.5) drawn up on 5 January 1996 with retroactive effect to 2 January 1996 covered only the period from 2 to 31 January inclusive and thus reflected a temporary situation.

(b) The appellant has still not been notified of his new posting, as he was told by the Chief, Personnel Service, in her memorandum of 2 January 1996 notifying him of the administrative decision.

(c) The appellant's post has not been filled by another staff member and his functions have been performed, since 8 January 1996, by a temporary staff member.

In the light of these facts, the Panel concludes that the administrative decision is still in the course of implementation and has not yet produced all its administrative effects.

7. As regards the injury suffered by the appellant, the Panel observes that being placed on special leave pending a new posting obviously does this staff member's career irreparable harm given his current administrative situation. The Panel notes that the representative of the Secretary-General has not contested that such harm has been done.

8. Consequently, the Panel concludes that:

(a) The administrative decision has not yet been implemented;

(b) Irreparable injury has been done; and

(c) The appellant satisfies the conditions for an application for suspension of action within the meaning of article 14 of the JAB Rules of Procedure.

9. In the light of the foregoing, the Panel recommends that the Secretary-General suspend the effect of the contested administrative decision and reinstate the appellant in his functions pending notification of a new posting or any other justified and fair administrative decision that leads to a final resolution of the appellant's situation."

On 19 January 1996, the Applicant complained of the administrative decision to the Panel to Investigate Allegations of Discriminatory Treatment. On 5 February 1996, he again complained to this same Panel of the failure to assign him to a P-5 post that had become vacant in the Office of Public Information in Geneva.

On 14 February 1996, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed him as follows:

> "The Secretary-General has considered your request in the light of the Panel's conclusions, in particular its interpretation of article 14 of the Rules of Procedure concerning the conditions for admissibility of a request for suspension of action. The Secretary-General cannot agree that your request is admissible since, on the one hand, the administrative release from functions has been in effect as of 2 January 1996 and, on the other, the file contains no evidence of irreparable injury. Given your unfavourable responses to previous suggested assignments, any reassignment will have to take account of the prevailing employment context at the Secretariat and the particular circumstances of your case. The Administration is duty-bound to take all these factors into account in formulating a new proposal and cannot be held to have failed to act when barely less than a week has elapsed between your request for suspension of action and your release from functions.
>
> For the above reasons, the Secretary-General considers your request inadmissible but reserves your right to seek redress if the administrative decision to offer you a new assignment is unduly delayed and evidence is produced that the delay will give rise to irreparable injury."

On 15 February 1996, the Applicant requested the Secretary-General to review the personnel action form dated 5 February 1996, placing the Applicant on "special leave with full pay until further notice".

On 28 February 1996, the Chief, Personnel Service, gave the Applicant a list of choices for assignments, including Cameroun, Congo and Ghana, requesting that he reply by 5 March 1996. On 3 April 1996, the Chief, Personnel Service, informed the Applicant that the MINURSO mission was not an option for the time being. She then repeated the choice of missions offered in her 28 February memorandum specifying that they were family missions and requesting a written answer by 10 April 1996.

On 15 April 1996, the Applicant lodged an appeal with the JAB, contesting the decision of 5 February 1996.

On 2 July 1996, the Panel to Investigate Allegations of Discriminatory Treatment determined that the Applicant was a victim of discriminatory treatment and recommended that the Administration assure the smooth progress of the Applicant's career.

On 23 July 1996, the Applicant filed with the Tribunal the application referred to earlier in the "first case".

The JAB adopted its report in the "second case" on 13 December 1996. Its conclusion and recommendation read as follows:

> "Conclusion and recommendation
>
> 46. The Panel concludes that the administrative decision to remove the staff member from his functions and place him on special leave with full pay has caused him irreparable injury and seriously affected his career, as the result of a decision that the Administration has been incapable of explaining.
>
> 47. The Panel recommends that the staff member be reinstated in a P-4 post corresponding to his qualifications, at Geneva or another duty station, or offered a voluntary separation arrangement given that he is due to retire shortly."

On 18 March 1997, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report dated 13 December 1996 and informed him, inter alia, as follows:

> "The Secretary-General has ... taken note of the Board's conclusion that the administrative decision to place you on special leave with full pay is causing you irreparable injury by seriously affecting your career. He has also taken note of the Board's recommendation to reinstate you in a post corresponding to your qualifications, at Geneva or another duty station, or offer you a voluntary separation arrangement given that you are due to retire shortly. The Secretary-General has decided to accept this recommendation and, with due regard for the options mentioned and your family situation, has identified a P-4 post in the Information Centre in Dakar to which you will be assigned.
>
> ..."

On 12 June 1997, the Applicant requested the JAB to suspend action on the Secretary-General's decision to assign him to Dakar, alleging that such decision constituted a further irreparable injury to his rights and to the health of his family. By letter dated 3 July 1997, the Presiding Officer of the JAB, Geneva, informed the Applicant as follows:

> "I refer to your submission of 12 June 1997 requesting a suspension of action on the decision contained in the communication to you of the Under-Secretary-General for Administration and Management of 18 March 1997.
>
> Following consultation with Headquarters, I have decided not to pursue proceedings as the request contained in your submission falls outside the competence of the Joint Appeals Board. I attach the related correspondence which includes the fax of 2 July 1997 of the Chief, Personnel Service, UNOG, to the Chief, Rules and Regulations Unit, OHRM, and the latter's reply of the same date.
>
> The Secretary of the Joint Appeals Board would be happy to advise you on the procedures to follow if you wish to pursue the matter in question with the Administrative Tribunal."

On 5 March 1998, the Applicant filed with the Tribunal the application referred to earlier in the "second case".

The JAB adopted its report on the "third case" on 8 December 1998. Its conclusions and recommendations read as follows:

> "63. In the light of the foregoing, the Panel concludes that:
>
> (i) The evaluation by the Chief, Information Centres Service, ... is valid by virtue of ST/AI/240/Rev.2, para. 14;
>
> (ii) The evaluation by the Assistant Secretary-General for Public Information ... dated 4 July 1996 is null and void.
>
> 64. Consequently, the Panel unanimously recommends that:
>
> (I) The memorandum dated 4 July 1996 containing the remarks by the Assistant Secretary-General for Public Information should be withdrawn from the appellant's

personal file, and

(ii) In accordance with paragraph 14 of administrative instruction ST/AI/240/Rev.2, the evaluation by the Chief, Information Centres Service, dated 26 February 1996 should be placed in the appellant's personal file together with the performance evaluation report covering the period from 16 December 1992 to 31 October 1994, the appellant's objections and the Panel's report dated 20 December 1995."

On 26 May 1999, the Secretary-General transmitted a copy of the JAB report to the Applicant and informed him, inter alia, as follows:

"The Secretary-General has examined your case in the light of the Board's report and has decided to accept its conclusions and recommendation. Accordingly, the Secretary-General has decided that:

(I) The memorandum of 4 July 1996 containing the comments by the Assistant Secretary-General for Public Information be withdrawn from your personal status file; and, that

(ii) In accordance with paragraph 14 of ST/AI/240/Rev.2, the appraisal dated 26 February 1996 by the Chief of the Information Centres Service be filed in your personal status file, together with the performance evaluation report covering the period 16 December 1992 to 31 October 1994, your rebuttal and the panel's report dated 20 December 1995.

..."

Whereas the Applicant's principal contentions in the "first case" are:

1. The Applicant's rights were violated when he was placed on SLWFP. This decision by the Respondent amounted to humiliating, degrading and discriminatory treatment and did not conform with his earlier decision, accepting the JAB's recommendations, in which he confirmed that the Administration would assure the smooth progress of the Applicant's career.

2. The Applicant's rights have been violated by the failure to assign him to a post at the P-5 level after 14 years at the P-4 level.

Whereas the Respondent's principal contention in the "first case" is:

The Administration exercised its discretionary power in a reasonable manner when it placed the Applicant on SLWFP, in the interest of the Organization, while searching for a suitable new post for the Applicant.

Whereas the Applicant's principal contention in the "second case" is:

The Respondent violated the Applicant's rights by assigning him to the duty station in Dakar, in light of the medical situation of his family.

Whereas the Respondent's principal contention in the "second case" is:

The Secretary-General has the discretion to assign staff members to any post in the Organization.

Whereas the Applicant's principal contention in the "third case" is:

The Applicant's rights are violated by the Respondent's decision to keep him on SLWFP indefinitely.

Whereas the Respondent's principal contention in the "third case" is:

The Administration exercised its discretionary power in a reasonable manner when it placed the Applicant on SLWFP, in the interest of the Organization, while searching for a suitable new post for the Applicant.

The Tribunal, having deliberated from 13 to 29 July 1999, now pronounces the following judgement:

I. The Applicant has brought three different cases before the Tribunal : cases No. 934, No. 1009 and No. 1073. The Tribunal has decided to join cases No. 934, 1009 and 1073, as they all arise out of the same basic facts. In case No. 934, the Applicant challenged the decision of 2 January 1996, to place the Applicant on SLWFP. In case No. 1009, the Applicant challenged a second decision, communicated to him on 18 March 1997, to assign him to a P-4 post in the Dakar Information Bureau. In case No. 1073, the Applicant reiterated his claim that the decision to put him indefinitely on SLWFP violated his rights. The assignment of the Applicant to Dakar was never put into effect. The Applicant therefore remained on SLWFP until his retirement on 30 June 1999.

II. The first decision was the result of a certain apparent undercurrent of tension between Applicant and the Chief, Information Service, which was never expressed in any "official" way by the Chief, Information Service. On the contrary, she qualified the Applicant in the best terms in his performance evaluation report for several years and praised his work. However, at the same time she left it to be understood that the Applicant had conflicts with colleagues. In addition, she displayed towards him an attitude that the Applicant considered discriminatory .

III. The Applicant refers to the findings of the Panel to Investigate Allegations of Discriminatory Treatment made in 1992 that he had been the object of discrimination, in that he had been given tasks inferior to his level and placed under the control of a staff member of a lower rank within the office hierarchy. Notwithstanding this pronouncement of the Panel, the Applicant complains of new acts of discrimination against him, in relation to the formation of working teams for the summer conference from which he was excluded. He

requested that a post description be provided to him in order to know exactly what his official duties were. That request, for one reason or another, was only provided to him after much delay. The Applicant lodged an appeal with the JAB on this issue. In its report, the JAB found that "there were persisting damaging circumstances suffered by the Appellant". The Secretary-General accepted the JAB's recommendation that "a memorandum be placed in the appellant's administrative file" concerning the discriminatory treatment he suffered, in order to ensure that "the prejudicial situation faced by [him did] not recur."

IV. On 23 November 1995, the Personnel Office gave him the choice between two missions assignments, MINURSO and UNAVEM, for an initial period of three months. On 29 November, the Applicant rejected the offers, citing both his own and his son's medical conditions. The Applicant was informed on 2 January 1996, that attempts to find him an alternate assignment in UNOG had been unsuccessful, that efforts to place him outside of Geneva were likewise not possible, and that in accordance with the instructions of the Secretary-General, he would be placed on special leave with full pay effective immediately, until an assignment could be identified for him.

This decision lies at the heart of the case. The Applicant had been working in a post at the P-4 level. He had good qualifications and he was consistently given high ratings for performance. His post was not abolished; rather, he was placed on special leave with full pay. His post was left vacant and the functions of the post were performed by a temporary staff member. It was difficult for the Applicant to accept the offers to transfer him outside of Geneva, in view of his health and family situation.

V. In effect, the attempts to assign the Applicant outside of Geneva had all the characteristics of a sanction. The assignments offered to the Applicant were mostly "non-family missions", i.e. he would have had to leave his family behind in Geneva, something not in the least advisable taking into account that he had delicate health and a very

ill child. All of this was confirmed by a letter of 18 April 1996 from the Director, Medical Service. Also, in a letter of 7 December 1995, the Chief of Personnel admitted, after consultation with the Medical Service, that a field mission "would not be compatible with his own medical situation, which is already exacerbated by his son's medical condition".

VI. Finally, as the Applicant would not accept the post that was offered to him in Dakar, the Director-General, UNOG, wrote a letter to the Chief of Staff, Executive Office of the Secretary-General in New York saying that there was no other solution but to place the Applicant on SLWFP. Significantly, the Director-General, UNOG, specified that "this entire issue originated from a request by the [Chief, Information Service]." He did not explain why, at the mere request of the Chief, Information Service, who had never uttered a single word of complaint concerning the Applicant's work, such an exceptional condition should be imposed on the Applicant. Further, he remained on SLWFP for three years, costing the Organization a considerable amount of money, while at the same time the UN had to pay a temporary staff member to perform the functions of the Applicant's post.

VII. According to staff regulation 1.2, staff members are at the disposal of the Secretary-General who can assign them to different posts according to the needs of the service. Reasonableness, due process, and non-discrimination, are, among others, the limits to the discretion of the Secretary-General. (Cf. Judgement No. 704, El-Battouty (1995)).

VIII. In the present case, everything indicated that the Applicant, a man of satisfactory background and experience, who was three years from retirement, should have continued in his post. Yet the Administration did not allow him to do so, without any proper explanation and solely at the request of the Chief, Information Service.

IX. SLWFP is a measure used only in exceptional circumstances. It is normally used for short periods of time, for instance, until a new position is found for a staff member. It must also be borne in mind that SLWFP may amount to a sanction against the staff member subjected to it, when used in cases where it is not justified. Such a measure must never be adopted without ensuring that the rights of the staff member are guaranteed and should never amount to a veiled attempt to discipline a staff member without due process.

X. When the circumstances surrounding the decision are not at all clear, as in the present case, the prolongation of leave presented the Applicant with a *fait accompli* without any escape, especially since he was already close to obligatory retirement and making a mockery of his rights.

XI. The Tribunal is satisfied that important material and moral damage was inflicted on the Applicant. His career was abruptly interrupted. The efforts made by the Administration to provide the Applicant with a position in accordance with his qualifications and consonant with his health and family conditions were, at best, perfunctory. He was offered positions that he could not accept and his refusals to accept them were supported in each case by the Health Department. The Tribunal does not consider that these offers were made in good faith.

XII. Furthermore, the anguish of being left without any functions to perform, for a prolonged period of time, while even his offer of gratuitous work for the Organisation was not accepted, constitutes a moral damage that must be compensated. (Cf. Judgement No. 812, Everett (1997)).

XIII. For the foregoing reasons, the Tribunal orders the Respondent to pay to the Applicant an amount equivalent to one year of the Applicant's net base salary at the rate in effect on the date of separation.

(Signatures)

Mayer GABAY
First Vice-President, presiding

Julio BARBOZA
Second Vice-President

Victor YENYI OLUNGU
Member

Geneva, 29 July 1999

Maritza STRUYVENBERG
Executive Secretary